

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

11 ONE BEACON INSURANCE COMPANY,) CASE NO. 3:07-CV-03540-BZ
12 a corporation,)
12) PRE-TRIAL CONFERENCE ORDER
13 Plaintiff,)
13) Pre-Trial: June 26, 2008
14 vs.) Time: 4:00 p.m.
14) Trial: July 1, 2008
15 HAAS INDUSTRIES, INC., a) Time: 9:00 a.m.
15 corporation,) Judge: Hon. Bernard Zimmerman
16 Defendants.)
17

18 By and through their undersigned counsel, the parties, One
19 Beacon Insurance Company and Haas Industries, Inc., respectfully
20 submit this, their Joint Pre-Trial Conference Statement.
21

22 **SUBSTANCE OF THE ACTION**

23 This is an action for commercial cargo lost while being
24 transported in interstate commerce.
25

26 **RELIEF PRAYED**

27 Parties agree that if plaintiff prevails, plaintiff will
28 receive the principal sum of \$104,617.00 plus prejudgment interest

1 calculated as provided in 28 U.S.C. § 1961. The parties agree that
2 if defendant prevails as to any of its affirmative defenses,
3 plaintiff will take nothing.

4

5 **UNDISPUTED FACTS**

6 Professional Products Inc. ("PPI") purchased electronic
7 equipment from Omneon Video Networks ("Omneon"). The equipment was
8 to be shipped to the City University of New York ("CUNY"). Omneon
9 contacted defendant Haas Industries, Inc. ("Haas") to transport the
10 equipment. Omneon executed and Haas issued a bill of lading
11 (Exhibits "G" and "I") for the transportation.

12

13 At the relevant time, Haas was a licensed motor contract
14 carrier and property freight forwarder. It did not have authority
15 as a common carrier or broker.

16

17 When the shipment was delivered to CUNY, it was short goods
18 valued at \$105,647.00.

19

20 PPI filed a claim with plaintiff One Beacon, its general
21 property loss insurer. One Beacon paid the claim and is subrogated
22 in the amount of \$104,647.00.

23

24 Omneon filed a claim with Haas in the amount of \$154,912.50.
25 Haas tendered its check in the amount of \$88.00, which it contends
26 to be in settlement of the missing goods based upon the \$.50 a lb.
27 limitation of liability that Haas contends is applicable. Omneon
28 cashed the check.

STIPULATIONS

2 1. Plaintiff has established the elements of its *prima facie*
3 case without prejudice to the issue of standing.

4 2. Parties stipulate to the admission of all joint exhibits,
5 save for Exhibits "M," "T" and "U," as to which Haas reserves
6 objection: "M" foundation and "T" and "U" relevancy.

DISPUTED LEGAL ISSUES

9 1. Whether One Beacon has standing to bring this action.

10 2. What effect, if any, is to be given pursuant to the "law

11 of the case" doctrine to the findings set forth in the court's

12 Amended Order Denying Motions for Summary Judgment.

13 3. Whether Haas effectively has limited its liability.

14 4. Whether there has been an accord and satisfaction.

DISPUTED FACTUAL ISSUES

17 One Beacon disputes whether Haas provided adequate means to
18 determine what the excess valuation charge would be if a value for
19 the cargo were declared.

TRIAL PREPARATION

22 Trial will be limited to adjudication of three affirmative
23 defenses: (1) Standing/real party in interest; (2) entitlement to
24 limitation of liability; and (3) accord and satisfaction. Thus,
25 defendant has the burden of moving forward.

27 Defendant will call Carmen Holster, Controller, Haas
28 Industries, Inc., whose testimony generally will comport with her

1 declaration on file.

2

3 Plaintiff will call:

4 Denny Bell, Vice President, PPI, who will testify about PPI's
5 policies and practices concerning the declaration of value and
6 the purchase of insurance.

7

8 Connie Siller, Omneon Video Graphics, will testify that she
9 has never seen Exhibit "D."

10

11 **EXHIBITS**

12 A. FMCSA Motor Carrier details and authority history.

13 B. Haas standard tariff.

14 C. Omneon nation trade show tariff.

15 D. January 12, 2005 "Dear Valued Customer" letter.

16 E. Invoice Haas to Omneon dated on or about January 27,
17 2005.

18 F. Haas freight bill - operations - WITH "Conditions of
19 Contract of Carriage."

20 G. Haas freight bill - delivery receipt - with "Conditions
21 of Contract of Carriage."

22 H. Haas freight bill and "Terms and Conditions of Contract."

23 I. Multiple page Haas bill of lading "Conditions of Contract
24 of Carriage."

25 J. Direct Air Service bill of lading.

26 K. Omneon claim to Haas.

27 L. Haas claim to Direct Air Service.

28 M. Bell letter to Debbie Thatcher November 15, 2005.

1 N. Holster letter to Omneon Connie Siller November 21, 2005
2 with endorsed check.
3 O. John Turk letter to Williams December 9, 2005.
4 P. Compilation report - Haas - Omneon shipments 2005.
5 Q. James Attridge letter to Carmen Holster March 18, 2006.
6 R. Excerpts from National Motor Freight Classification.
7 S. Coverage summary One Beacon policy of insurance.
8 T. Read-Rite house waybill.
9 U. BAX Read-Rite tariff.

10

11 **TRIAL**

12 Trial to the court will commence July 1, 2008 and will last
13 approximately two days.

14

15 **DISCOVERY RESPONSES**

16 No discovery responses will be used.

17

18 **MOTIONS**

19 There will be no motions in limine.

20

21 **SETTLEMENT**

22 A settlement conference was held before Magistrate Judge James
23 on June 11, 2008 without the case settling.

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28 ///

CONSENT TO MAGISTRATE

2 The parties have consented to trial before a Magistrate, 28
3 U.S.C. § 636(c).

5 IT IS SO ORDERED

6 July 1, 2008

7 DATED: June 13, 2008


Dennis J. Munner
UNITED STATES MAGISTRATE JUDGE